

AO 243 (Rev. 09/17)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Southern District of Texas
Name <i>(under which you were convicted)</i> : Andrew Ian Farmer		Docket or Case No.: 4:16CR00408-001
Place of Confinement: FCI El Reno, El Reno, Oklahoma, 73036	Prisoner No.: 14677-479	
UNITED STATES OF AMERICA		
Movant <i>(include name under which convicted)</i> V. Andrew Ian Farmer		

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

Bob Casey United States Courthouse
Southern District of Texas
515 Rusk Street
Houston, Texas 77002

(b) Criminal docket or case number (if you know): 4:16CR00408-001

2. (a) Date of the judgment of conviction (if you know): 6/21/2021

(b) Date of sentencing: 6/21/2021

3. Length of sentence: 72 Months

4. Nature of crime (all counts):

18 U.S.C § 371 - Conspiracy to Commit Wire and Securities Fraud
15 U.S.C § 77q(a) and 77x - Securities Fraud

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

6. (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐

No ☒

United States Courts:
Southern District of Texas
FILED

DEC 13 2022

Nathanael Ochsner, Clerk of Court

AO 243 (Rev. 09/17)

8. Did you appeal from the judgment of conviction? Yes ☐ No ☒

9. If you did appeal, answer the following:

- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

AO 243 (Rev. 09/17)

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

AO 243 (Rev. 09/17)

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Ineffective Assistance of Counsel

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The court appointed counsel at the time of my sentencing, Gerald Fry, made material errors during my sentencing that constitute a constitutionally deficient performance. Mr. Fry's deficient performance doubtlessly affected the sentence that I received from this Court. At my sentencing hearing, Mr. Fry argued that I should receive a sentence of probation, even though he and I had discussed that Mr. Grob had already received a sentence of one year and a day for his more limited role in the scheme. I told Mr. Fry that in my opinion he should point out the lower likely sentences for my similarly situated co-defendants Austin and Sieck. The record is clear that Mr. Sieck was an equal partner in the scheme and Mr. Austin was the unquestioned senior partner and chairman. Mr. Fry's primary argument for probation, roundly rejected by the Court, was contrary to my wishes.

Given the sentences that had already been issued in this case, Mr. Fry's argument for probation was clearly unreasonable. There is a reasonable probability that this Court would have decided upon a significantly lower sentence had Mr. Fry argued for a downward departure from the sentence requested by the AUSA instead of asking for probation. Mr. Fry also failed to make any argument to the Court that my culpability was no greater than that of Austin and Sieck, and that is was in fact objectively lower than that of Austin based upon his role as the ultimate decision maker of the scheme.

Mr. Fry's performance, especially at my sentencing hearing, fell below an objective standard of reasonableness.

- (b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

- (2) If you did not raise this issue in your direct appeal, explain why:

No direct appeal was made.

- (c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

AO 243 (Rev. 09/17)

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Sentencing Disparity Between Similarly Situated Co-Defendants

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

During my sentencing, the Court noted that it must consider sentencing disparity between co-defendants. It is clear that my 72 month sentence is significantly disparate from the 36 month sentences given to Austin and Sieck. Sieck was a full partner in the scheme and the investigatory and evidentiary records in this case clearly show that Austin was the unquestioned leader of the scheme. All three of us cooperated with the government for more than 2 years after our guilty pleas. All three of us share near identical culpability for the scheme, as evidenced by our very similar restitution amounts contained in our respective Judgements.

While the Court could not have considered sentences that had not yet been issued at the time my sentence was issued, it would be only fair to resentence me to the same 36 month sentence that was given to Austin and Sieck. Society gains nothing additional from my incarceration for 36 months more than my similarly situated co-defendants. The sooner I return as a tax paying member of my community the sooner I can be able to begin repairing the damage that I have caused to my community and family. Including working towards paying the restitution ordered by this Court.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

AO 243 (Rev. 09/17)

(2) If you did not raise this issue in your direct appeal, explain why:
No direct appeal was made.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

AO 243 (Rev. 09/17)

GROUND THREE: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

AO 243 (Rev. 09/17)

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

AO 243 (Rev. 09/17)

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

The grounds presented herein have not previously been presented in any post-conviction motion, petition, or application. By the time the sentencing disparity, which forms the basis of the grounds herein, became actionable the time for a direct appeal had long since expired.

AO 243 (Rev. 09/17)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At the preliminary hearing:

Kevin Edmundson, Austin Texas

(b) At the arraignment and plea:

Chris Flood, Houston Texas

(c) At the trial:

N/A

(d) At sentencing:

Gerald Fry, Houston Texas

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

AO 243 (Rev. 09/17)

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Although my Judgment of Conviction became final more than one year ago, it is not time barred pursuant to Paragraph 6(4) of The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255.

The basis for the grounds presented herein both rest firmly upon the sentencing disparity between myself and my co-defendants Austin and Sieck. As both Austin and Sieck were not sentenced until December 2021 the sentencing disparity could not have been discovered before the date of their sentencings. As such, the one year statute of limitations under 28 U.S.C. § 2255 would not expire until, at the earliest, the one year anniversary of the Austin and Sieck sentencing.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

AO 243 (Rev. 09/17)

Therefore, movant asks that the Court grant the following relief:

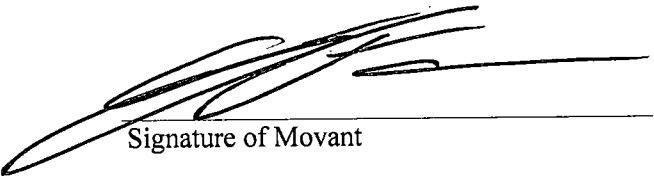
Amend the sentence imposed in this case to match the 36 month sentences given to my similarly situated co-defendants, Austin and Sieck.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 12/8/2022
(month, date, year)

Executed (signed) on 12/8/2022 (date)



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

December 8, 2022

United States Courts
Southern District of Texas
FILED

DEC 13 2022

Nathan Ochsner, Clerk of Court

United States Courthouse
Attn: Clerk of the District Court
PO BOX 61010
Houston Texas 77002-2600

RE: US V. Farmer (4:16CR00408-001)

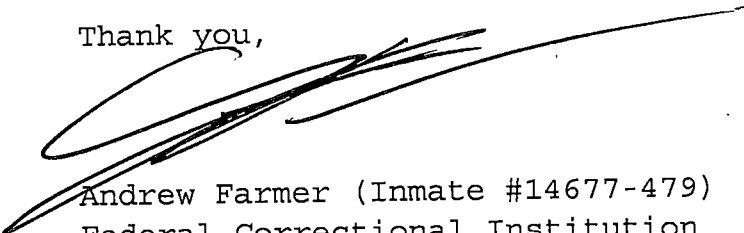
Dear Sir/Madam:

My name is Andrew Farmer (Inmate #14677-479) currently incarcerated at the FCI in El Reno Oklahoma.

Attached please find my "Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody" under 28 U.S.C §2255 in the Court of the Hon. V Gilmore. I am filing this motion *pro se* and would appreciate the indulgence of the Court in the event that I have made procedural of styling errors.

I have enclosed 1 original and 2 copies of the Motion. Please return a file-stamped copy to me at the address listed below. Please clearly mark the envelope as "Legal Mail" so that it will be delivered as confidential mail.

Thank you,



Andrew Farmer (Inmate #14677-479)
Federal Correctional Institution
Satellite Prison Camp
PO Box 1500
El Reno, Oklahoma 73036

ANDREW FARMER
REG # 14677-479
FEDERAL CORRECTIONAL INSTITUTION
PO Box 1500
EL Reno OK 73036



United States Courts
Southern District of Texas
FILED
DEC 13 2022
Nathan Ochener, Clerk of Court

14677-479
District Court Clerk
PO BOX 81010
CITICH CITY, TX 77002-2600
United States

LEGAL MAIL

